

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3525 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ILYAS @ CHHANNO AYUBBHAI JAWRAWALA (CHHIPA)

Versus

STATE OF GUJARAT

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Appearance:

MR MM TIRMIZI for Petitioner

MR. D.P. JOSHI, AGP, for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/12/1999

#### ORAL JUDGEMENT

The petitioner came to be detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred as 'the PASA Act') by virtue of an order passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, on 17.3.1999 in exercise of power under Section 3(1) of the PASA Act. In the grounds of detention, the detaining authority took into consideration three offences registered against the

petitioner with Dani Limda Police Station. The authority also took into consideration the statements of two anonymous witnesses relating to two offences. The authority after verifying the statements recorded satisfaction that powers under Section 9(2) of the PASA Act are required to be exercised in respect of these two witnesses as the statements made by them are correct and the fear expressed by the witnesses qua the petitioner is genuine. The authority came to the conclusion that resorting to PASA is the only remedy available for immediately preventing the petitioner from continuing his illegal activities as the other lesser drastic remedy cannot be resorted to.

2. The petitioner has challenged the detention on various grounds. The main grounds are that the respondents have not paid any heed to the representation made on 25.9.1999 demanding certain documents in the form of statements of witnesses in the offences registered against the petitioner which are considered by the detaining authority while passing the order of detention. Another ground is that the statements of the witnesses were recorded on 15.3.1999, they were verified on 17.3.1999 by the detaining authority and the order was passed on that very day by the detaining authority. The detaining authority had therefore no time to consider the question of exercise of power under Section 9(2) of the PASA Act. The order is, therefore, bad.

3. Mr. Trimizi, learned advocate appearing for the petitioner has relied on these two grounds only. He has drawn attention of this court to the fact that the detaining authority has relied on Dani Limbda Police Station C.R. No. 104 of 1998 in which one Mohmad Sajid Mohmad Umar Qureshi and one Tahirkhan Pathan have been cited as witnesses. Statements of these two witnesses were not supplied to the petitioner at the time of detention. The petitioner therefore by a representation dated 25.9.1999 demanded these documents. The same have not been supplied. Therefore, the petitioner is deprived of his right of making an effective representation guaranteed under the Constitution of India which would make the continued detention illegal. Mr. Tirmizi submitted that the authority had no time to think over the need for exercise of power under Section 9(2) of the PASA Act after taking into consideration all the relevant aspects as the statements were verified on 17.3.1999 and the order of detention was passed on that very day. He therefore urged that the petition may be allowed.

4. The detaining authority has filed affidavit in

reply.

5. Mr. Joshi, learned AGP, for the respondents after verifying the facts in all fairness conceded that Mohmad Sajid Mohmad Umar Qureshi and one Tahirkhan Pathan have been cited as witnesses in C.R. No. 104 of 1998 of Dani Limbda Police station which has been relied on by the detaining authority in the grounds of detention. He also conceded to the fact that despite representation, documents have not been supplied to the detenu.

6. The petition deserves to be allowed on the ground of non-supply of relevant documents relied upon by the detaining authority in the grounds of detention. Undisputedly, the statements of two witnesses have not been supplied to the detenu either at the time of detention along with grounds of detention or after the request made by him by a representation dated 25.9.1999. This can be said to have adversely affected and infringed the right of the detenu of making effective representation guaranteed under the Constitution. The continued detention therefore would be rendered illegal. The petition, therefore, deserves to be allowed on this ground alone.

7. Mr. Tirmizi does not press for verdict on the ground to assail the order of detention.

8. The petition is allowed. The order of detention dated 17.3.1999 passed by the Police Commissioner, Ahmedabad City, Ahmedabad is quashed and set aside. Detenu be set at liberty if not required in any other case. Rule made absolute. No order as to costs.

(A.L. DAVE, J)

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